

# MEMO



**To:** LA County Board of Supervisors

**Date:** August 29, 2012

**From:** Jessica Bartholow and Antionette Dozier  
Western Center on Law and Poverty

**CC:** William Fujioka, CEO, L.A. County Department of Social Services

**RE:** Motion by Supervisor Mark Ridley-Thomas 52-B concerning the Lifetime Bans on Basic Needs Assistance for People with Prior Drug-Related Felony Convictions

We respectfully submit this memo for your consideration as you discuss the motion by Supervisor Mark Ridley-Thomas (#52-B) concerning lifetime bans on basic needs assistance – such as food, shelter and basic needs grants. We hope you will consider the information provided below that lays out the harm of two such bans: the ban on CalFresh (food stamps) benefits and the ban on the California Work Opportunity and Responsibility to Kids (CalWORKs) basic-needs grants and work supports.

Despite overwhelming evidence that these bans *increase* the likelihood of recidivism, regardless of the high cost of incarceration and the unmistakable disproportionate impact of this policy in communities of color, diverse California stakeholders have been unable to create a dialog that circumvents media sound bites and allow us to find an alternative policy that will achieve justice while protecting the integrity of public programs. The cycle of repeated drug-related arrests and incarcerations comes at a high price to individuals caught up in the cycle but also for states, which collectively spend about \$52 billion a year on correction costs - a number that has quadrupled over the last 20 years as the war on drugs has resulted in more aggressive policing, criminalization and incarcerations, especially in dense urban communities.

We would deeply appreciate your consideration of these issues and respectfully request your leadership in drawing together the diverse stakeholders concerned about issues impacting re-entry, recovery, public safety, poverty and hunger in Los Angeles County. We believe that such a meeting would facilitate a dialog that would result in a solution we could all get behind -- one that would improve life opportunities for people with prior drug-felony convictions and their families while protecting the integrity of our public programs -- and work together to enact in Sacramento.

### ***History of Public Benefits Lifetime Bans in California***

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 enacted a policy barring states from issuing federal Temporary Aid to Needy Families (TANF) and Supplemental Nutrition Assistance Program (SNAP), formerly known as Food Stamp Program and in California known as CalFresh Program, benefits to people who were convicted of a drug-related offense after August 22, 1996.<sup>1</sup> Since then, the Federal Administrators have removed this bar, but given states an option of whether or not they wanted to keep the restrictions in place. California was one of the states that chose to maintain this discriminating, lifetime bar for people with former drug-related felony offences when the conviction

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<sup>1</sup> The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PL 104- 193). Sec. 115 AB 1260 (Ashburn) – Chapter 284, Statutes of 1997

occurred after 1996. No other types of crimes (including violent ones) were singled out for this unique lifetime punishment.

The original rationale for the ban (to prevent food stamps being sold for drugs) is no longer valid – the advent of the EBT (Electronic Benefits Transfer) card significantly reduced benefits trafficking. A recent USDA analysis found that trafficking diverts only 1 cent for every dollar of benefits provided – which translates into a 99% success rate at feeding hungry families.<sup>2</sup>

There have been several legislative efforts in California to overturn the ban for food stamps and CalWORKs.<sup>3</sup> The only successful retrenchment of the policy was in 2004, when the California Hunger Action Coalition sponsored AB 1796 (Leno) which was signed by Republican Governor Schwarzenegger, ending the lifetime ban for some individuals but not for all.<sup>4</sup> Meanwhile, 38 states have chosen to fully opt-out of or alter these lifetime bans<sup>5</sup>

Federal legislation to end the lifetime bans in the SNAP and TANF have been introduced. Rep. Barbara Lee, D-Calif., introduced H.R. 329, which has eight co-sponsors and would repeal the food stamp ban, and Rep. André Carson, D-Ind., introduced H.R. 3053, which would repeal the TANF ban and has 19 co-sponsors. Though they have raised awareness and brought policy attention to the issue, neither one has much chance of passing.

#### ***Lifetime Ban Based on False Premise***

The argument in support of lifetime bans on basic needs cash assistance and food assistance is based on the idea that if we ban people with prior drug felony convictions from receiving benefits, we will keep these public funds out of their possession. However, in most cases, individuals impacted by the ban reside with other eligible individuals and may even be the authorized representative in those cases, with primary responsibility of the benefit card upon which the benefits are stored. In these cases, the only thing that the lifetime ban achieves is making these families hungrier and poorer, and crime more likely as a potential path out of economic struggle.

#### ***Fraud and Trafficking Protection in CalFresh Have Been Strengthened Under Brown Administration***

When considering Lifetime Bans of federal food assistance provided through SNAP, one of the most often considered misuses of public funds is whether individuals could sell these benefits, rather than using it for food, for the purposes of buying drugs. This process is referred to as trafficking.<sup>6</sup> While this kind of benefit abuse gets a lot of public attention, it is rare and is becoming even rarer with the efforts of the Brown Administration and Obama Administration to end these practices.<sup>7</sup> Over the summer, both Administrations collaborated to convene a CalFresh Integrity Workgroup and the California Department of Social Services (CDSS) will soon issue a new work plan that emanated from the workgroup. The Obama Administration also recently issued draft regulations that will narrow

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<sup>2</sup> The Extent of Trafficking in the SNAP Program (2006-2008)

<http://www.fns.usda.gov/ora/menu/Published/SNAP/FILES/ProgramIntegrity/Trafficking2006Summary.pdf>

<sup>3</sup> AB 1260 (Ashburn SB 659 (1999, C.Wright -- Vetoed by Davis), SB 1984 (2000, C. Wright) AB 767 (2001, Goldberg), Carl Washington AB 1947 (2002, Washington), Karen Bass AB 855 (2005, Speaker Bass), AB 2192 (2006, Speaker Bass), AB 828 (20011-12, Swanson), SB 1060 (2012, Hancock)

<sup>4</sup> 1796 (Leno), Chapter 932, Statutes of 2004 Welfare and Institutions Code § 18901.3

<sup>5</sup> Drug Offenders: Various Factors May Limit the Impacts of Federal Laws That Provide for Denial of Selected Benefits, GAO-05-238, (Washington, D.C.: September, 2005) <http://www.gao.gov/new.items/d05238.pdf>

<sup>6</sup> <http://www.gao.gov/products/GAO-10-956T>

<sup>7</sup> <http://www.fns.usda.gov/cga/pressreleases/2011/0503.htm>

opportunities for SNAP benefits to be trafficked and the likelihood that individuals participating in this activity to be identified and prosecuted.<sup>8</sup>

### ***Lifetime Ban Policies May Increase Likelihood of Recidivism***

California ranks second-worst in the nation in recidivism rates, nearly 15 percentage points higher than the national average. This abnormally high recidivism rate contributes to total corrections costs that, prior to realignment, ate up over 10% of our state budget and now threatens to consume funds from local municipalities. According to the federal Government Accountability Office (GAO), banning those convicted of a drug felony that have completed their sentences and paid their debt to society from vital public service programs is a policy that runs contrary to state and federal initiatives intended to reduce recidivism by easing prisoner reentry and fostering prisoner reintegration into society.<sup>9</sup>

Studies have shown that the denial of state-sponsored support programs, such as CalFresh and CalWORKs, to individuals previously convicted of a drug related felony contributes to drug relapse and increases recidivism rates for those denied.<sup>10</sup> Research findings on women prisoners provide insight into how state-sponsored support programs, which address short-term needs, actually reduce the odds of recidivism by 83%.<sup>11</sup> Those who are categorically denied food stamps face significant barriers in reentering society. Research shows that poverty status is a powerful predictor of recidivism among women offenders, with one-half of the women released from prison recidivating within three years.<sup>12</sup> Through the denial of CalFresh benefits, former inmates face a greater challenge in successfully transitioning from incarceration to home life, and to reduce the high rate of recidivism in the California criminal justice system, the state must support ex-felons transitioning back into the community on multiple fronts.<sup>13</sup> Allowing people with former drug felony convictions to receive food stamps, recidivism as well as future incarcerations would be reduced, this would allocate CalFresh deficits to quickly be made up by the reduction in jail and prison costs.<sup>14</sup>

In 2012, the Department of Finance (DOF) estimated that by providing services (such as a valid state identity, drug and alcohol treatment programs,<sup>15</sup> life skills trainings, and job training/employment services) to people on felony probation, the state may prevent the costs of re-incarceration for non-violent drug offenders. Some of these services would be eligible for a 50% federal match through the CalFresh Employment and Training Program, but only if the people receiving the services are CalFresh recipients. Even more basic, people re-entering the community will be less likely to be successful at sustaining these kinds of activities if they are unable to secure the basic conditions necessary for sustaining life, such as food. By depriving participants in jail diversion programs the benefits of CalFresh, we undermine their success. Reducing options for successful re-entry and prison diversion results in

<sup>8</sup> <http://www.fns.usda.gov/snap/rules/Regulations/pdfs/052412.pdf>

<sup>9</sup> GAO, *Drug Control: Difficulties in Denying Federal Benefits to Convicted Drug Offenders*, GAO/GGD-92-56, (Washington, D.C.: April 21, 1992) and *Drug Offenders: Various Factors May Limit the Impacts of Federal Laws That Provide for Denial of Selected Benefits*, GAO-05-238, (Washington, D.C.: September, 2005) <http://www.gao.gov/new.items/d05238.pdf>

<sup>10</sup> Eadler, Lyndsey K. "Purging the Drug Conviction Ban on Food Stamps in California." *The Scholar: St. Mary's Law Review* 14.117 (2011): 117-64. Print. <<http://thescholarlawreview.org/wp-content/uploads/STS103A-Eadler.pdf>>.

<sup>11</sup> Holtfreter, Kristy, Michael D. Reisig, and Merry Morash. "Poverty, State Capital, And Recidivism Among Women Offenders\*." *Criminology & Public Policy* 3.2 (2004): 185-208. Print.

<http://olms.cte.jhu.edu/olms/data/resource/6080/HOLTFRETER-POVERTY%20AND%20RECIDIVISM.pdf>

<sup>12</sup> *Ibid*

<sup>13</sup> Eadler, Lyndsey K. (2011).

<sup>14</sup> *Ibid*

<sup>15</sup> See analysis for Senate Bill 678 (Leno – 2011).

[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=200920100SB678&search\\_keywords=](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200920100SB678&search_keywords=)

unnecessary incarcerations, which in turn could cost states and localities millions in increased jail, prison, and other criminal justice expenses.<sup>16</sup>

#### ***The Food Assistance Ban – Turning Away Federal Dollars***

Food benefits through SNAP are 100% funded by federal dollars. Keeping millions in food dollars from low-income Californians with prior drug-felony convictions and their families in Washington, D.C., misses the opportunity to support vulnerable families as they struggle to stay in their community. It also results in fewer dollars being spent in these communities, resulting in billions in lost economic activity.<sup>17</sup>

Denying persons with prior drug felony convictions also limits the ability of local governments to utilize federal match funding for employment and training and job support programming available to SNAP recipients. Under the SNAP Employment & Training program, states can draw down a 50/50 match in unlimited federal funds for programs that help SNAP recipients prepare for, find or keep employment.<sup>18</sup> In fact, Texas runs a SNAP E&T program, supported by 50 percent federal match, which funds services such as job search, education, work experience, and post-employment follow-up among others for SNAP recipients, including ex-offenders through its Project RIO (Re-integration of Offenders), a program designed to reduce recidivism.<sup>19</sup> According to a tri-state study conducted in 2001, these kinds of employment and training interventions can contribute greatly to reducing recidivism.<sup>20</sup> Moreover, the Bureau of Justice Statistics reports that 82 percent of people nationwide on parole who are returned to prison are drug and alcohol abusers, 40 percent are unemployed, and about 75 percent have not completed high school.

#### ***Lifetime Bans Magnify Poverty Among Very Poor, Single Mothers***

The burden of poverty is felt by many, yet is especially poignant for women who are released and have family to care for. Research shows that the burden of poverty falls most heavily on women and children and mothers with prior convictions and young children in the home have the most hurdles.<sup>21</sup> Findings state that poverty status is a powerful predictor of recidivism among women offenders; with one-half of the women released from prison recidivating within three years, many potentially being mothers who fall on desperate times where the need to put food on their table is paramount.

#### ***Lifetime Bans Leave the Most Vulnerable Kids Behind***

Research shows that 55 percent of incarcerated prisoners will live with their children upon release.<sup>22</sup> As a result, those who are ineligible for basic needs benefits will not be the only ones aggrieved by lifetime bans. Although children of adults who are banned remain eligible to receive public assistance, restrictions for people with former drug felony convictions mean that benefits decline for an entire household.

The CalWORKs lifetime ban always impacts low-income children, by resulting in even lower basic needs grants (current grants already put families below 50% of the federal poverty line). Because their parents are ineligible for CalWORKs, they are also not required to participate in mandatory work programs that other parents are required to participate in or to receive the work support services other parents are

<sup>16</sup> The Council of State Governments Justice Center cites access to public benefits as a key contributor to successful prisoner reentry, recommends states opt out of bans. <http://www.reentrypolicy.org/Report/PartII/ChapterII-D/PolicyStatement24>

<sup>17</sup> [http://money.cnn.com/2008/01/29/news/economy/stimulus\\_analysis/index.htm](http://money.cnn.com/2008/01/29/news/economy/stimulus_analysis/index.htm)

<sup>18</sup> <http://www.cdss.ca.gov/cdssweb/PG128.htm>

<sup>19</sup> [http://www.workingpoorfamilies.org/pdfs/WA\\_FSET\\_Lessons\\_Learned\\_Final.pdf](http://www.workingpoorfamilies.org/pdfs/WA_FSET_Lessons_Learned_Final.pdf)

<sup>20</sup> <http://www.ceanational.org/PDFs/3StateFinal.pdf>

<sup>21</sup> <http://olms.cte.jhu.edu/olms/data/resource/6080/HOLTFRETER-POVERTY%20AND%20RECIDIVISM.pdf>

<sup>22</sup> <http://bjs.ojp.usdoj.gov/content/pub/pdf/iptc.pdf>

eligible to receive. As cited earlier in this memo, lack of job opportunities significantly contributes to recidivism. Additionally, children of parents banned from CalWORKs are unable to access childcare, disadvantaging the even further from their peers. The result of this policy is clear in the outcome data for these households. According to a study by the Public Policy Institute of California, when the adult in the household does not receive assistance or participate in Welfare to Work, that family stays on assistance longer and as a result is in deep poverty longer.<sup>23</sup> It is important to note that removing the ban would not increase the caseload or administrative cost as many of the affected individuals are residing in households with other eligible household members. For these households, the removal of the ban would simply mean that the amount of CalWORKs benefits they receive would be slightly adjusted, to better fit the basic needs of a family of their size and the adult would receive work support services, including child care. This would only be true if the parent is meeting the work requirements of the program. So, in essence, removing the CalWORKs lifetime ban only helps adult members of the household who are meeting the work requirement.

The CalFresh lifetime limit also harms low-income kids in these vulnerable families. According to a study by the Public Policy Institute of California, the number of ineligible parents in CalFresh recipient households has grown steadily since the year 2000, and the lifetime ban contributes to that changing demographic of SNAP recipients.<sup>24</sup> The most recent Department of Social Services' (DSS) assumptions about the affected caseload estimates that about 840 CalFresh recipients would become newly eligible if the ban for the program is lifted, significantly less than a one percent increase. It is important to note that removing the ban would not increase the caseload or administrative cost as many of the affected individuals are residing in households with other eligible household members. For these households, the removal of the ban would simply mean that the amount in SNAP benefits, which are funded with 100% federal funds and spent in our state's food and agriculture economy, would be better suited for the food budget for a family of their size and more likely to prevent hunger for the entire family.

#### ***Lifetime Ban on CalFresh Deprives Treatment Programs Federal Funds***

Certified, residential treatment and rehabilitation programs serving low-income Californians may apply for CalFresh benefits for their residents. The centers then receive the benefits of all residents on a single card for the treatment center. California's network of residential treatment programs depends on federal CalFresh benefits to supplement their food budgets. Failing to remove the ban on all people with former drug offenses contributes to the gaps in treatment program budgets, thereby reducing access to substance abuse treatment.

#### ***Lifetime Ban Adds Unnecessary Bureaucracy***

Eligibility workers are required to determine the exact felony for each applicant and existing recipients and must verify their "eligibility" – a time-consuming and inaccurate process.<sup>25</sup> In many cases, the banned individual resides with others who are eligible for benefits, and therefore the County Human Services Agency and the State already foot the bill for the administrative costs. In the case of CalFresh, in which the benefits are 100% federally funded,<sup>26</sup> California is not benefiting by drawing the full amount that the household is eligible to receive while paying its entire portion – if not more due to increased verification of drug felony tracking – to maintain the case. For CalFresh, adding a household member has very little administrative cost and no additional administrative cost at application or renewal.

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<sup>23</sup> [http://www.ppic.org/main/publication\\_quick.asp?i=1011](http://www.ppic.org/main/publication_quick.asp?i=1011)

<sup>24</sup> [http://www.ppic.org/content/pubs/report/R\\_911CDR.pdf](http://www.ppic.org/content/pubs/report/R_911CDR.pdf)

<sup>25</sup> There are more than a thousand types of drug felony convictions: <http://codes.lp.findlaw.com/cacode/HSC/1/d10/6/5>

<sup>26</sup> With the exception of a small subset of CFAP recipients.

For applicants where an individual or the entire case is denied due to an apparently “ineligible” felony, they have the right to appeal the decision through the administrative hearing process. The longer the lifetime bans stay in place, the more appeals will be heard in our already overburdened and underfunded administrative hearing system. Eliminating the non-mandatory drug-related felony questions on the CalFresh application saves time for every new or recertifying CalFresh and CalWORKs case in the state. With over 2 million new CalFresh applications this past year alone and limited state general funds for program administration, simplified application processes are desperately needed.

### ***Looking for Solutions - Together***

Lifetime bans on basic needs assistance reduces opportunity for people re-entering their communities to lead sober and responsible lives, harms children in households with a person recovering from drug addiction, and increases incidences of recidivism. This is why 38 other states have chosen to fully opt-out of or alter these lifetime bans<sup>27</sup> and why we sincerely hope that the board will continue to work with us throughout the fall to develop a policy proposal that will limit harm to low-income families in which a person with a prior drug-related felony resides and reduce recidivism.

### **About Western Center on Law and Poverty**

Western Center on Law and Poverty (WCLP) serves as a support center for California’s legal aid community and leads the way in large-scale impact litigation, administrative advocacy, budget advocacy and legislative advocacy in an effort to ensure that low-income Californians can easily access safe and affordable housing, adequate health care, and a broad spectrum of safety net services. [www.wclp.org](http://www.wclp.org)

### ***For more information about Western Center’s position on this policy, contact:***

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<sup>27</sup> Drug Offenders: Various Factors May Limit the Impacts of Federal Laws That Provide for Denial of Selected Benefits, GAO-05-238, (Washington, D.C.: September, 2005) <http://www.gao.gov/new.items/d05238.pdf>